

ESTATE OF SAN PIERRE KILKAKHAN
(SAM E. HILL)

IBIA 75-37 (Supp. 3)
(Supp. IBIA 72-9, 1 IBIA 299)

Decided January 21, 1976

Petition for reconsideration.

Denied

1. Indian Probate: Reconsideration: Generally

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors such as newly discovered evidence or fraud are involved.

APPEARANCES: Spokane County Legal Services, by Roger Coombs, Esquire, for petitioners, Christine Sam and Nancy Judge.

ORDER

Christine Sam and Nancy Judge, by and through counsel on January 12, 1976, petitioned for reconsideration of the Board's decision of December 2, 1975, contending among other things that:

- 1) Petitioners had filed a timely notice of appeal on October 30, 1975, pursuant to 43 CFR § 4.293.
- 2) Petitioners received no notice of docketing in this cause.
- 3) Petitioners were not given an opportunity to file a brief supporting their contentions within 30 days after the mailing of notice of docketing.

An examination of the record discloses that a final decision was rendered in this matter on July 11, 1975. There is no further appeal in the Department from such decision. Any further appeal would be to the Federal Courts.

The filing and pendency of a request for reopening or reconsideration will not operate to stay the effectiveness of the decision involved.

As stated, supra, the Board's decision was rendered on July 11, 1975. This decision is final for the Department.

Subsequent thereto and on September 10, 1975, a Petition for Reopening and Intervention dated August 15, 1975, was submitted to Administrative Law Judge Robert C. Snashall, who issued an order on November 3, 1975, denying such petition for the reason that the petitioners were decedent's first cousins once removed and therefore one further degree removed from inheritance than those persons named in the Board's decision of July 11, 1975. Judge Snashall was sustained by the Board on December 2, 1975.

Since as previously stated, supra, the decision of the Board was final, there was no further appeal in the Department. Consequently, the rules referred to and the contentions included in the petition for reconsideration are inapplicable and without merit.

[1] The Secretary of the Interior has inherent power to reopen, reconsider and review administrative determinations purporting to dispose finally of Departmental proceedings when some factor, such as newly discovered evidence or fraud, is brought to his attention.

No new evidence has been submitted by the petitioners either with respect to the petitions for reopening or reconsideration that would tend to affect the final decision of July 11, 1975.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, IT IS ORDERED that the Petition for Reconsideration dated January 12, 1976, be and the same is DENIED.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

I concur:

Alexander H. Wilson
Administrative Judge